

§ 268.3

40 CFR Ch. I (7–1–00 Edition)

soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in § 268.3.

[55 FR 22686, June 1, 1990, as amended at 56 FR 3877, Jan. 31, 1991; 57 FR 37270, Aug. 18, 1992; 58 FR 8685, Feb. 16, 1993; 58 FR 29884, May 24, 1993; 59 FR 48043, Sept. 19, 1994; 60 FR 244, Jan. 3, 1995; 61 FR 15597, 15662, Apr. 8, 1996; 61 FR 33682, June 28, 1996; 63 FR 28639, May 26, 1998; 63 FR 65940, Nov. 30, 1998; 64 FR 25414, May 11, 1999]

§ 268.3 Dilution prohibited as a substitute for treatment.

(a) Except as provided in paragraph (b) of this section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with subpart D of this part, to circumvent the effective date of a prohibition in subpart C of this part, to otherwise avoid a prohibition in subpart C of this part, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

(b) Dilution of wastes that are hazardous only because they exhibit a characteristic in treatment systems which include land-based units which treat wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA), or which treat wastes in a CWA-equivalent treatment system, or which treat wastes for the purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of this section unless a method other than DEACT has been specified in § 268.40 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.

(c) Combustion of the hazardous waste codes listed in Appendix XI of this part is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in § 268.48;

(2) The waste consists of organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co-generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

(d) It is a form of impermissible dilution, and therefore prohibited, to add iron filings or other metallic forms of iron to lead-containing hazardous wastes in order to achieve any land disposal restriction treatment standard for lead. Lead-containing wastes include D008 wastes (wastes exhibiting a characteristic due to the presence of lead), all characteristic wastes containing lead as an underlying hazardous constituent, listed wastes containing lead as a regulated constituent, and hazardous media containing any of the aforementioned lead-containing wastes.

[61 FR 15663, Apr. 8, 1996, as amended at 61 FR 33682, June 28, 1996; 63 FR 28639, May 26, 1998]

§ 268.4 Treatment surface impoundment exemption.

(a) Wastes which are otherwise prohibited from land disposal under this part may be treated in a surface impoundment or series of impoundments provided that:

(1) Treatment of such wastes occurs in the impoundments;

(2) The following conditions are met:

(i) *Sampling and testing.* For wastes with treatment standards in subpart D of this part and/or prohibition levels in subpart C of this part or RCRA section 3004(d), the residues from treatment are analyzed, as specified in § 268.7 or § 268.32, to determine if they meet the